

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JACKSON, Minors.

UNPUBLISHED
December 19, 2013

No. 316022
Kent Circuit Court
Family Division
LC Nos. 10-054440-NA;
10-054441-NA

Before: WHITBECK, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Respondent-mother, E. Patterson, appeals as of right the trial court's order terminating her parental rights to her two minor children. Because the trial court did not clearly err when it found that terminating Patterson's rights was in the children's best interests, we affirm.

I. FACTS

A. BACKGROUND FACTS

The trial court terminated Patterson's rights to a previous child in 1996 on the basis that Patterson had parenting deficiencies and a history of substance abuse, emotional and mental problems, and immaturity. The trial court terminated Patterson's parental rights to a second child in 1998 because Patterson lacked parenting skills and demonstrated unstable emotional functioning. The two children at issue in this case are Patterson's daughter, born in 2001, and her son, born in 2005.

Patterson's daughter suffers from asthma. Patterson's son suffers from complex partial epilepsy, neurofibromatosis (a genetic condition), mild developmental delays, and blindness in one eye. The trial court took jurisdiction over Patterson's children after she failed to take her son to his medical appointments in December 2010.

The Department of Human Services (the Department) asserted that the primary concerns were emotional stability, substance abuse, and parenting skills. In January 2011, Dr. Thomas Spahn conducted a psychological evaluation and clinical interview with Patterson, after which he determined that she suffered from asthma, diabetes, substance abuse, major depression, post-traumatic stress disorder, and passive-aggressive personality disorder. Dr. Spahn testified that people who suffer from passive-aggressive personality disorder tend to procrastinate, are unable to fulfill responsibilities, "give up" when upset, and are highly critical of themselves and others.

Dr. Spahn testified that Patterson would be an effective parent if she became emotionally stable, but otherwise her personality disorders and health problems would create a “vicious cycle” of mood disturbances.

Various witnesses testified that, from January 2011 to March 2011, Patterson was cooperative, participated in services, and made progress on her service plan. Patterson’s substance abuse assessment counselor testified that her substance abuse appeared to be in full remission. The trial court placed the children with Patterson.

B. THE CHILDREN’S PLACEMENT WITH PATTERSON

In March 2011, Patterson failed to take her son to medical appointments and tested positive for marijuana. In April 2011, Patterson was hospitalized for three days after exhibiting homicidal and suicidal ideations. Patterson was placed on prescription medication to address her anxiety and depression.

At a review hearing in May 2011, Kelly Branch, a therapist for Bethany Christian Services, testified that she observed that Patterson was “harsh” with her daughter during visitation. The children’s guardian ad litem testified that the children shared a strong bond with Patterson. After the May 2011 review hearing, Patterson tested positive for cocaine and tested negative for her psychotropic medication.

B. THE CHILDREN’S PLACEMENT IN FOSTER CARE

In August 2011, the trial court held a review hearing. Finding that the children were in danger in Patterson’s care and that Patterson was making only “minimal” progress, the trial court ordered the children placed in foster care.

At the November 2011 review hearing, Kathie Black, the children’s caseworker, testified that Patterson and the children shared a strong bond and the children were excited to see her. However, Black testified that she was concerned because Patterson threatened to “come to [the son’s] school and beat him” if he did not behave in school. Black testified that the children exhibited behavioral problems in school and in the foster home.

Patricia McFerrin, a parenting time specialist, testified that Patterson interacted well with her children when she was in a “good mood.” However, when Patterson was not in a good mood, she would use a harsh tone of voice with the children, make negative comments, and fail to interact with them. In December 2011, Patterson’s parenting class instructor reported that Patterson’s attendance in class was “poor” and that she did not “excel” in the class.

At the January 2012 review hearing, Marzena Mohler, the children’s foster care case manager, testified that the daughter was doing well in the foster home. However, according to Mohler, the son still struggled in school and exhibited aggressive behavior. The son’s counselor reported that aggression in children was commonly due to trauma. Mohler testified that Patterson and the children shared a strong bond but that, when Patterson was in a bad mood, it affected the children and her interaction with them.

Beginning on February 7, 2012, Patterson tested negative for her psychotropic medications. In March 2012, Patterson tested negative for her psychotropic medications and tested positive for marijuana. The Department referred Patterson to an intensive outpatient substance abuse treatment program. Patterson did not complete the program because she attended the intake appointment, but failed to attend the follow-up appointment.

At the April 2012 review hearing, Mohler testified that the children continued to exhibit behavioral issues. According to Mohler, the children and Patterson were very bonded. However, Patterson had unrealistic expectations of the children's capabilities.

In April 2012, a psychiatrist reviewed Patterson's medications and diagnosed her with substance abuse, bipolar disorder, post-traumatic stress disorder, and passive-aggressive personality disorder. The psychiatrist changed some of Patterson's medications. The trial court informed Patterson that the "lynchpin" of the case was whether she could consistently take her psychotropic medication. Patterson tested partially positive on one test for her psychotropic medications in April 2012, but subsequently did not test positive for her medications again during the pendency of the case. In June 2012, Patterson's therapist, Rachel VanHorn, reported that Patterson stated that she had stopped taking her medication for three days because she "felt good."

In July 2012, Mohler testified that the foster home was appropriately meeting the children's needs and that the children had completed their respective grades in school. She testified that Patterson was making some progress in counseling. According to Mohler, the children and Patterson were strongly bonded, but Patterson did not have realistic expectations of the children, let her emotions affect the children's wellbeing, and needed assistance appropriately addressing their behavioral problems.

In August 2012, VanHorn testified that Patterson had stopped taking her medication because she did not believe that it was helping. VanHorn testified that Patterson expressed suicidal ideations; VanHorn was concerned that Patterson would harm herself. A crisis intervention program assessed Patterson and she qualified for a 30-day program. Dr. Jamie McClean, a psychiatrist, diagnosed Patterson with recurrent, severe, major depression, and with substance abuse in full remission.

In October 2012, VanHorn switched Patterson to a therapist who could provide her with more intensive services. VanHorn testified that, when she transferred Patterson, she still required counseling to address medication compliance. VanHorn testified that Patterson demonstrated progress in some areas, but that she overall still had "a ways to go".

At the October 2012 review hearing, Mohler testified that Patterson had missed 5 of 10 counseling sessions with VanHorn and that Patterson had missed three drug screens during the reporting period. Mohler testified that the daughter's school performance had greatly improved and that she was doing very well in the foster home. Mohler testified that the son had also improved and that he had only been in trouble at school once.

C. THE TERMINATION HEARING

At the conclusion of the October 2012 review hearing, the trial court ordered the prosecutor to file a termination petition. The trial court informed Patterson that she still had time to demonstrate substantial progress but she would need to complete all her drug screens and attend all her appointments.

In December 2012, Patterson failed to attend a drug screen. In January 2013, Patterson's new therapist, Shawtina Flowers, reported that Patterson had shown progress and a decrease in symptoms of depression. However, Patterson tested negative for her psychotropic medications. According to Mohler, Patterson told her that she could not afford the medications, but when Mohler offered financial assistance, Patterson declined.

Lorae Robinson, a parenting time specialist, testified Patterson was "pretty unstable" during parenting time and that she witnessed Patterson experiencing emotional breakdowns and emotional outbursts during about 90 percent of her parenting times. Robinson testified that when Patterson was experiencing emotional turbulence, the son would separate from her and the daughter would "take on the parent role and . . . be attentive to her mother's needs" rather than the other way around. Mohler testified that Patterson would cry during parenting sessions, causing the children to cry as well. According to Mohler, Patterson also expected the children to behave or perform above their emotional capacities, became frustrated with them, and would employ strict consequences for minor misbehaviors.

Robinson and Mohler testified about several recent instances of inappropriate parenting. For instance, Mohler testified that in October 2012, Patterson had failed to make trick-or-treating arrangements, but demanded that the children stay at the parenting time session even though they wanted to leave to go trick-or-treating. Robinson testified that, during parenting time in February 2013, Patterson encouraged the daughter to strike a student at school who had been picking on her. Mohler testified that, during a different parenting time session in February 2013, Patterson spent the majority of her parenting time sitting on the couch with her eyes closed and responding to the children with one-word answers.

According to Mohler, the foster parents also ensured that the children's significant medical needs were met and the children's behavior in school and at home had improved since the children were in foster care. However, when Patterson would speak about the case with the children, their problematic behavior would increase in the foster home. Mohler testified that the children needed permanence within a short period of time.

According to Mohler, the children's current foster parents did not intend to adopt them, but a family member was interested in adopting them. A guardianship would not be appropriate because the relative was unable to adopt the children without a subsidy. The family would receive a subsidy immediately if they adopted, but would not receive one for six months with a guardianship.

D. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court found that clear and convincing evidence supported terminating Patterson's parental rights under MCL 712A.19b(3)(c)(i), (g), and (l). In support of these

grounds, the trial court found that Patterson demonstrated inability to (1) care for her health and the children's health, and (2) effectively parent the children. It found that Patterson continued to neglect her mental health issues, and remained unstable and unwilling to accept responsibility.

Specifically considering the children's best interests, the trial court found that the children needed priority because of their special needs and developmental abilities. It found that Patterson and the children were bonded, but that this bond worked to the children's disadvantage because the daughter assumed the role of the parent when Patterson was upset. It found that Patterson's mental instability affected her ability to parent, and that Patterson had failed to rectify that instability.

The trial court also found that the children were "flourishing" in foster care and that their behavioral problems established that they needed permanence. It determined that they would be unable to find permanence with Patterson within a reasonable time. Ultimately, the trial court concluded that termination of Patterson's parental rights was in the children's best interests.

II. THE CHILDREN'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of evidence on the whole record that termination is in the child's best interests.¹ We review for clear error the trial court's determination regarding the child's best interests.² A finding is clearly erroneous if there is evidence to support it, but we have a definite and firm conviction that the trial court made a mistake.³

B. LEGAL STANDARDS

The trial court should weigh all the evidence available to determine a child's best interests.⁴ To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home."⁵ The trial court may consider a parent's mental health and compliance with his or her case service plan.⁶ The trial court may

¹ MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

² MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

³ *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

⁴ *In re Trejo Minors*, 462 Mich at 353.

⁵ *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

⁶ See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

also consider the child's improvements and well-being while in care, the parent's visitation history with the children, and the possibility of adoption.⁷

C. APPLYING THE STANDARDS

Patterson contends that the trial court clearly erred by terminating her parental rights because she and the children shared a strong bond. We disagree.

The trial court did find that Patterson and the children were strongly bonded. But even when the parent and children are strongly bonded, if there is a serious dispute about whether a parent has a *healthy* bond with the children, termination may be in the children's best interests.⁸ We defer to the trier of fact concerning questions of the credibility and weight of the evidence.⁹ However, we conclude that the extensive history in this case demonstrated that the children's strong bond with Patterson was not a healthy bond and, in any event, other factors outweighed the value of strength of the bond between Patterson and the children.

Mohler consistently testified that Patterson and the children shared a strong bond, and Patterson demonstrated commitment to her parenting times. However, according to Black, Patterson was mentally unstable during her parenting times throughout the proceedings. Black and Mohler testified that when Patterson was in a good mood, she appeared to be an effective parent, but when Patterson was in a bad mood, she was overly critical of the children, become frustrated with them, and would discipline them inappropriately. According to the parenting time specialist, Patterson demonstrated emotional breakdowns during ninety percent of her parenting visits. During these times, the daughter—a preteen—would take on the role of the caregiver. Mohler testified that during periods of Patterson's emotional instability and outbursts, the children became upset during the parenting times and their negative behaviors subsequently increased in the foster home.

Further, the trial court considered other appropriate factors when determining that termination of Patterson's parental rights was in the children's best interests. Patterson failed to comply with her service plan, failed to attain emotional stability, and inappropriately parented the children when in "bad moods." Given the record before the trial court, none of these findings were clearly erroneous. We conclude that the facts in this case support the trial court's finding that, despite that Patterson and the children shared a strong bond, termination was in the children's best interests.

Patterson also contends that the trial court erred when it found that the children would achieve stability if it terminated her parental rights because the foster parents did not intend to adopt the children. We disagree.

⁷ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

⁸ See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2001).

⁹ *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Here, Mohler testified that the foster parents did not intend to adopt the children. Among other factors, the trial court may consider the advantages of a foster home over the parent's home and the possibility that the children will be adopted.¹⁰

We do not agree with Patterson's implication that the advantages of the foster home are only relevant if the foster parents might adopt the children. In this case, the advantages of the foster home were relevant to demonstrate the benefits of stability and an appropriate parenting environment.

Here, the trial court found that the children "flourished" while in foster care and the children were adoptable. We are not convinced that this finding was mistaken. While placed in foster care, the children's behavioral problems were moderated and ultimately showed strong improvement, and the children began to perform better in school. Thus, the comparison between Patterson's home and the foster home established that the instability of their environment with Patterson was inhibiting the children's ability to flourish and grow. Further, Mohler also testified that relatives were interested in adopting the children. While adoption by a family other than their current foster family might cause the children more instability in the short term, this did not negate that relatives were interested in adopting the children and that they were more likely to be able to achieve permanence and stability through adoption.¹¹ We conclude that the trial court may appropriately consider the advantages of the foster home even if the foster parents do not intend to adopt the children.

We conclude that the trial court did not clearly err when it found that terminating Patterson's parental rights was in the children's best interests.

We affirm.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Elizabeth L. Gleicher

¹⁰ See *In re BZ*, 264 Mich App at 301; *In re AH*, 245 Mich App at 89.

¹¹ See *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008).